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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/427,260	10/25/1999	FARHAD KHOSRAVI	239/227	2937

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ORRICK, HERRINGTON & SUTCLIFFE, LLP
4 PARK PLAZA
SUITE 1600
IRVINE, CA 92614-2558

EXAMINER

PELLEGRINO, BRIAN E

ART UNIT PAPER NUMBER

3738

DATE MAILED: 05/16/2003

17

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/427,260

Applicant(s)
Khosravi et al.

Examiner
Brian Pellegrino

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Mar 4, 2003
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-14, 18, 19, 23-30, and 55-57 is/are pending in the application.
- 4a) Of the above, claim(s) 11-14, 18, 19, and 23-28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 29, 30, and 55-57 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on Oct 25, 1999 is/are a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

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DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the embodiment of a stent with a coiled sheet of expandable wing-like elements having a plurality of locking elements must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Claim Rejections - 35 U.S.C. § 103

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fogarty et al. '520 in view of Khosravi et al. '515 and Gray et al. '406. Fig. 9A shows a stent with a plurality of stretchable elements biased to expand from a contracted condition or are in an unstretched condition. Fig. 9B illustrates the stretchable elements in the stretched condition. Fogarty et al. disclose the stent is formed from a coiled-up sheet having overlapping inner and outer longitudinal sections, that is unrollable to an enlarged condition, col. 5, lines 4-11. Fogarty also discloses the sheet is made of a shape memory material, i.e. Nitinol, col. 6, lines 17-21. The sheet should be cooled at about 25° C for martensitic transformation and heated to about body temperature for austenitic transformation, col. 6, lines 23-29. However, Fogarty does not

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disclose a plurality of locking elements along an edge of the sheet or the stretchable elements being formed from a pair of wing-like elements. Khosravi et al. also discloses locking elements for engaging openings in the outer longitudinal section, Figs. 10,11, see also col. 4, lines 56-68. Gray et al. (Fig. 2) show a stent cell with wing-like shape and Fig. 6 shows the longitudinal adjacent cells are connected to one another at tips of opposing wing-like elements. It would have been obvious to one of ordinary skill in the art to use wing-like elements to form the stretchable cells as taught by Gray et al. in the stent of Fogarty et al. and also incorporate locking elements as taught by Khosravi such that there is greater flexibility in the stent for more tortuous vessels, while also maintaining the stent in tubular form by having its edges locked.

Claims 55-57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fogarty et al. '520 in view of Gray et al. (5895406). Fogarty is explained supra. However, Fogarty does not disclose the stretchable cells formed from a pair of wing-like elements. Gray is explained supra. Gray also teaches that the stent is axially flexible and has a reduced profile circumferentially, col. 3, lines 33-36. It would have been obvious to one of ordinary skill in the art to use wing-like elements to form the stretchable cells as taught by Gray et al. in the stent of Fogarty et al. in order to provide greater flexibility and avoids any protruding components which is important in reducing trauma to the patient's vessel.

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Response to Amendment

3. Applicant's arguments filed 3/4/03 have been fully considered but they are not persuasive. Regarding Applicant's remarks about the Drawing objection, it is noted that Applicant does disclose the separate features, but does not show or disclose them in combination. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, it should be noted that Fogarty was interested in flexibility and to use the Gray teaching would have been obvious because the end product is to have a flexible stent.

Conclusion

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

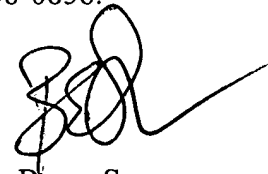
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Pellegrino whose telephone number is (703) 306-5899. The examiner can normally be reached on Monday-Thursday from 8am to 5:30pm. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott, can be reached on (703) 308-2111. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-2708.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.



Brian E. Pellegrino



Bruce Snow
Primary Examiner

TC 3700, AU 3738

5/14/03